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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 526.

MISSOURI PACIFIC RAILROAD COMPANY 5¼% SECURED SERIAL BONDHOLDERS COMMITTEE,
Petitioner,

v.

GROUP OF INSTITUTIONAL INVESTORS,
BONDHOLDERS PROTECTIVE COMMITTEE, NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY FIRST MORTGAGE,
EDMUND WRIGHT, *et al.*,
PROTECTIVE COMMITTEE FOR HOLDERS OF GENERAL MORTGAGE BONDS,
MANUFACTURERS TRUST COMPANY, as Trustee,
BANKERS TRUST COMPANY, as Trustee,
Respondents.

BRIEF FOR RESPONDENT MANUFACTURERS TRUST COMPANY, AS CORPORATE TRUSTEE UNDER THE FIRST AND REFUNDING MORTGAGE OF MISSOURI PACIFIC RAILROAD COMPANY, IN OPPOSITION.

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Record references in this brief are as follows:

C. R. = Transcript of proceedings in Cause No. 14,256 and Causes Nos. 14,264-14,274 in the Court of Appeals for the 8th Circuit.

1951 R. = The printed record filed in said United States Court of Appeals in Causes Nos. 14,264-14,274.

Texas R. = The printed record filed in said Court of Appeals in Cause No. 14,256.

1946 R. = The record on appeal filed with said Court of Appeals in the appeals numbered 13,367-13,369, both inclusive, and 13,371-13,373, both inclusive.

1941 R. = The record on appeal filed with said Court of Appeals in the appeals numbered 12,130-12,136 inclusive.

D. R. = The Fourth Supplemental Report and Fifth Supplemental Report and Order of the Interstate Commerce Commission approving the plan of reorganization of Missouri Pacific Railroad Company and affiliated debtors.

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Opinions Below.

The opinion of the District Court is reported at 93 F. Supp. 832 (E. D. Mo. 1950). The opinion of the Court of Appeals for the Eighth Circuit (C. R. 14-35)* is reported at

* A list of abbreviations and references used in this brief is on page iii, *supra*.

191 F. 2d 265 (8 Cir. 1951). The Fourth and Fifth Supplemental Reports of the Interstate Commerce Commission (D. R. 28469, 28640) are reported at 275 I. C. C. 59, 203. The Plan of Reorganization is at D. R. 28689-760.

Jurisdiction.

The jurisdictional requisites are set forth in the Petition.

Questions Presented.

1. Whether the holders of a junior interest [5¼% Secured Serial Gold Bonds of Missouri Pacific Railroad Company] in a bankrupt railroad company have been accorded a fair and equitable position in the Plan of Reorganization as required by Section 77 of the Bankruptcy Act, 11 U. S. C. §205.

On January 28, 1952, this Court denied certiorari in *James B. Morris, et al.* v. *Group of Institutional Investors, et al.* (October Term 1951, No. 415). Petitioners here, like those in No. 415, are representatives of holders of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds which are secured by the pledge of about 82% of the capital stock of the New Orleans, Texas & Mexico Railway Company, a debtor in these proceedings. Here, as in No. 415, this Court is asked to reexamine the finding of the Commission, concurred in by the two Courts below that the Secured Serial Bondholders received full compensatory treatment in the Plan of Reorganization. Therefore, respondent respectfully refers this Court to its brief in No. 415 for the statement of its reasons why certiorari should be denied.

2. Whether the Interstate Commerce Commission, acting under Section 77 of the Bankruptcy Act, 11

U. S. C. §205, has the power to provide in a plan of reorganization for the merger or consolidation of the three principal debtors into one corporation where one of the debtors owns about 95% of the capital stock of the second which in turn owns all the capital stock of the third, and the three have been operated on a unified basis for the last 28 years.

3. Whether the findings by the Commission and District Court that the New Orleans, Texas & Mexico Railway Company is still in need of reorganization and should be included in the System reorganization are supported by the evidence.

Statement.

The Missouri Pacific System comprises three major units: (1) the Missouri Pacific Railroad Company and its wholly owned subsidiaries, which together own about 6,328 miles but operate about 7,236 miles of railroad, (2) the New Orleans, Texas & Mexico Railway Company and its subsidiary railroad companies (commonly called the Gulf Coast lines), which together own about 1,623 miles but operate about 1,860 miles of railroad, and (3) the International-Great Northern Railroad Company and its subsidiary, which together own about 1,000 miles but operate about 1,155 miles of railroad (1941 R. 302-309).

On June 12, 1924, the New Orleans was authorized to acquire control of the International by purchase of stock (*Control of International-Great Northern R. R.*, 90 I. C. C. 262). On December 8, 1924, the Missouri Pacific was authorized to acquire control of the New Orleans (*Control of Gulf Coast Lines by M. P. R. R.*, 94 I. C. C. 191). At present, all of the capital stock of the International is owned by the New Orleans and approximately 95% of the capital stock of the New Orleans is owned by the Missouri Pacific (1941 R. 305,

308). Since 1924 the System has been "selling the public that the Missouri Pacific Railroad, the Gulf Coast lines and the International-Great Northern were all one family and not three separate families. During those [28] years, by advertising, or word of mouth and in a thousand ways shippers have been trained to route their freight or travel over these lines the same as though they were one line" (1951 R. 842). Proceedings for unification of the System pursuant to Section 5 of the Interstate Commerce Act had been undertaken in 1930 (*Missouri Pac. R. Co. Unification*, 166 I. C. C. 154 and 175 I. C. C. 26) and were dismissed after the institution of these reorganization proceedings (1941 R. 397; 239 I. C. C. 83).

The present Plan of Reorganization is the third to be approved by the Interstate Commerce Commission for the Missouri Pacific System. All three plans have provided for the consolidation of the System properties into one corporation (1941 R. 505, 506; 1946 R. 797, par. C; D. R. 28693, par. C). In its original report, the Commission said (1941 R. 299, 398; 239 I. C. C. 7, 85):

> "The proposed consolidation covers only owned properties which at the present time are being operated as a system. The record shows that certain economies may reasonably be expected to be effected thereby and that better service probably will result from continued system operation rather than from separate operation. A consolidation of the various system companies upon reorganization will permit a simplified capital structure."

The Commission concluded (1941 R. 400-401; 239 I. C. C. 7, 87):

> "The record* is persuasive that the proposed consolidation will result in benefit to the public, to

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* See Texas R. 29-59.

> the creditors of the debtors and to such of their stockholders as may have an interest in the new company . . . We find that, upon the record in this proceeding, and as a part of a plan of reorganization of the debtors, the proposed consolidation of the properties of all the debtors herein, excepting the Missouri-Illinois, will meet with the requirements of subsections (b) and (e) of Section 77 of the Bankruptcy Act, as amended, and will be compatible with the public interest."

In its Fifth Supplemental Report approving the present Plan of Reorganization the Commission said (D. R. 28646):

> "That separate incorporation of the debtors . . . would not accord with the national transportation policy; would not be consistent with the public interest and would constitute a burden on the obligations of the companies efficiently to render transportation services in interstate commerce."

See also Fourth Supplemental Report, D. R. 28547-548, 28616-617.

The Plan of Reorganization provides for the consolidation of the New Orleans, Texas & Mexico Railway Company with the rest of the System. On March 31, 1933, the New Orleans petitioned the District Court to be allowed "to effect a plan of reorganization in connection with, or as a part of, the Plan of Reorganization of Missouri Pacific Railroad Company." In its Fifth Supplemental Report the Commission carefully considered the "status of the New Orleans in the reorganization" and found "that the obligations of the New Orleans can be properly rearranged only by a reorganization" (D. R. 28643, 28646). The District Court discussed in great detail the evidence with respect to the possibility of the termination of the reorganization proceedings as to the New Orleans (93 F.

Supp. 856-862) and concluded that the New Orleans was still unable to meet its debts as they matured (*id.* at pp. 859, 862).

On January 22, 1952, this Court denied certiorari in *State of Texas* v. *Group of Institutional Investors, etc.* (October Term 1951, No. 416), where Petitioner challenged the power of the Commission to provide for a consolidation of the System lines which might offend against Texas local law.

Argument.

The District Court recognized that "if during the course of the reorganization proceedings, the Debtor becomes able to meet its debts as they mature, by refunding or otherwise, the proceedings should be dismissed" (93 F. Supp. at pp. 857-58). Its refusal to dismiss the proceedings with respect to the New Orleans was based solely on its finding of fact that that Debtor could not so meet its debts. This finding was made after a careful analysis of the evidence on that issue (93 F. Supp., pp. 857-862), and the finding was affirmed by the Court of Appeals (191 F. 2d at p. 271). No reason exists for this Court to re-examine this issue of fact.

The power of the Commission to provide in a Plan of Reorganization for the consolidation of the System lines into one corporation is clear from the statute, and has been sustained by decisions of the Courts.

I.

Section 77 grants power to the Commission to consolidate the system lines.

Section 77(a), 11 U. S. C. §205(a) provides in part that:

> "Any railroad corporation the majority of the capital stock of which having power to vote for the election of directors is owned . . . by any railroad corporation filing a petition as a debtor may file . . . in the same proceeding, a petition stating that it is insolvent or unable to meet its debts as they mature, and that it desires to effect a reorganization in connection with or as part of the plan of reorganization of such other debtor . . ."

On March 31, 1933, the Missouri Pacific Railroad Company filed a petition under Section 77(a). Thereafter, the New Orleans, Texas & Mexico Railway Company, "the majority of the capital stock of which having power to vote for the election of directors is owned" by the Missouri Pacific, also filed a petition under Section 77(a) "to effect a reorganization in connection with or as part of the plan of reorganization" of the Missouri Pacific.

Section 77(b), 11 U. S. C. §205(b) provides in part that "A plan or reorganization . . . :

> "5. Shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations."

The Plan of Reorganization (D. R. 28693, par. C) provides for the transfer of any interest in or control of all or any

part of the property of the debtor, the New Orleans, Texas & Mexico Railway Company, to another corporation, "the merger or consolidation of the debtor with another corporation." Thus the Plan does exactly what the Statute says it can do.

Petitioners assert that consolidation violates Section 77(f) because it is inconsistent with the provisions and purposes of Section 5 of the Interstate Commerce Act, 49 U. S. C. §5 (Petition, p. 18). An analysis of the requirements of Section 5 shows that this is not the case:

Requirements of 49 U. S. C. §5	Reports of Commission in this case
"the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated . . . and shall afford reasonable opportunity for such interested parties to be heard" (Section 5(b)).	"During the course of the present proceeding and prior to the commencement of the hearings at which the subject of the consolidation of the debtors was considered, notices of the time, place, and subject matter of the hearing, and invitations to be represented and introduce such evidence or make such representations as they might desire, were sent to the Governor of each of the States in which any part of the properties proposed to be consolidated are located" (1941 R. 398; 239 I. C. C. 85).
"If the Commission finds that . . . the proposed transaction . . . will be consistent with the public interest, it shall enter an order approving such transaction" (Section 5(b)).	"We find . . . separate incorporations of the system lines would not accord with the national transportation policy, will not be consistent with the public interest and will constitute a burden on

	the obligations of the companies efficiently to render transportation services in interstate commerce" (D. R. 28617; see also 1941 R. 401; 239 I. C. C. 87).
"the Commission shall give weight to the following considerations, among others: "(1) The effect of the proposed transaction upon adequate transportation service to the public."	"The record shows that certain economies may reasonably be expected to be effected thereby and that better service probably will result from continued system operation rather than from separate operation" (1941 R. 398; 239 I. C. C. 85; see also D. R. 28616-17, 28646-647).
"(2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction."	"The lines of railroad proposed to be consolidated are not parallel or competitive as between the three groups of railroads which will comprise the new consolidated company, and none of them is assigned by our Order in Consolidation of Railroads [159 I. C. C. 522], to any other system" (1941 R. 400-401; 239 I. C. C. 87).
"(3) the total fixed charges resulting from the proposed transaction" (Section 5(c)).	"the securities to be issued in the reorganization should be of such kind and of such amounts as to insure coverage of fixed interest in years of least favorable earnings . . .

	"fixed interest obligations would constitute 37.36 percent of total capitalization. . . . While this ratio of debt to total capitalization is somewhat higher than . . . in our approved plan of 1944, the recent larger earnings and more favorable future prospects of the debtors . . . justify the moderate increase" (D. R. 28564-566).
"Protection of employees" (Section 5(f)).	"Protection of interests of employees of debtors" (D. R. 28612-613).

Clearly the consolidation of the System lines is perfectly consistent with the purposes and provisions of 49 U. S. C. §5.

Petitioners also maintain that the debtors themselves must petition for consolidation. There is nothing in Section 77 to warrant this position. The debtors are controlled by boards of directors completely shut off from any part in the management of the railroad. The boards are elected by equity interests which may be declared worthless and denied further participation in the reorganized company. After bankruptcy such interests could not possess a determining voice with respect to such a vital part of the Plan.

II.

There is no conflict of decision.

Both this Court and two Courts of Appeals have recognized the existence of the power of the Commission to provide in a plan of reorganization for the consolidation of

affiliated debtors. *Callaway* v. *Benton*, 336 U. S. 132, 140 (1949); *Atlantic Coast Line R. Co.* v. *St. Joe Paper Co.*, 179 F. 2d 538, 544 (5 Cir. 1950), cert. denied 339 U. S. 929; *In re Chicago, R. I. & P. Ry. Co.*, 168 F. 2d 587, 594 (7 Cir. 1948), cert. denied sub nom. *State of Texas* v. *Brown*, 335 U. S. 855.

Conclusion.

For the foregoing reasons it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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